



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

PROBATE AND ADMIN. CAUSE NO.1041 OF 1992

IN THE MATTER OF THE ESTATE OF PETER WANJUGU GITHINJI - (DECEASED)

RULING

This succession cause, was filed in the year 1992.

After the Petition filed by Samson Mwea Wambugi on the basis of a written will purported to have been executed by the deceased, an objection was filed by three objectors namely Lucia Wanjiru Wambugu (now deceased), Teresio Njoka Wambugu and Susan Gakeri Wambugu. On the death of the first objector, (aforesaid) her son Joseph Muchira Wambugu was substituted in her place. The will was annulled by the Ruling delivered on 17th December, 1999 by Githinji J. (as he then was) and he appointed three sons of the Objectors as Administrators namely Joseph Muchira Wambugu Teresio Njoka Wambugu and Charles Githinji, Wambugu. As per the Ruling it was stated that “the evidence shows that deceased had three wives. It is just that the grant should be given to three sons of the deceased each from each house”.

Thereafter one Veronica Kanini Wambugu filed a summons for revocation dated 21st October, 2003 after summons for confirmation dated 23rd January, 2002 was filed by the above referred Administrators.

The said Veronica claimed that she was a widow of the deceased. Thereafter the grant was issued in the names of all the four persons on 24th February, 2004.

Thereafter, as they could not agree, two Petitioners out of them, namely Charles Githinji and Veronica Kanini Wambugu filed the summons for confirmation dated 21st July, 2005.

Veronica has in her affidavit sworn on 21st October, 2003 deponed that she is a lawful wife of the deceased having married him on 2nd May, 1981 under Christian Marriage and Divorce Act (cap 151) and has enclosed the Marriage certificate. She has further averred that she was occupying a piece of land known as Baagali/Karuru/174. She has tacitly conceded that Lucia Wanjiru Wambugu and Susana Gakui Wambugu are former wives to the deceased. In para 16 of the said affidavit – she has also mentioned the names of 20 beneficiaries apart from the widows.

She also filed a summons dated 4th August, 2005 for restraining orders against five person namely Joseph Muchira Wambugu, Teresio Njoka (two co-Administrator), Githinji Wambugu, Kabute Wambugu and Karanja Wambugu.

The 1st Respondent Joseph Muchira Wambugu responded to the said summons for restraining orders and averred, inter alia, that they, being beneficiaries, are entitled to the shares of the land Baragwi/Karu/174 and Kianyaga plot No.26, whereas the Applicant has wrongfully enjoyed exclusively the proceeds of the

estate from coffee plantation and the business of Bar. He also filed a summons dated 25th August, 2005 seeking to vary and review the restraining order dated 8th August, 2005.

Veronica then responded to the said contentions and reiterated that she has been using the aforesaid properties exclusively and she has never been given any assistance from any of the respondents.

One John Kabute Wambugi filed an affidavit sworn on 3rd May, 2006, in protest of the summons for confirmation. He has stated that he was making the said affidavit on behalf of late Lucia Waniru Wambugu's children.

The said affidavit avers inter alia that the family members have not agreed to the distribution. According to him the distribution be made amongst the four houses and not amongst the individual members.

I may observe that as per the ruling of Githinji J. (mentioned earlier in this Ruling), he has observed that the deceased had three wives and Susan Gakui Wambugu was one of the parties as objectors. The court did accept her as one of the widows and her children as the children of the deceased by appointing one of her sons as the co-administrator. I also observe that in the said judgment it was found that Lucia Wanjiru (now deceased) was living with her son Joseph Muchira on the land bearing title No.Kirinyaga/Gathigini/456 which has been registered in his name since 20th June, 1975, and in his ruling dated 19th December, 1997, he found that the said plot was registered of the said Joseph Muchira Wambugu, as an absolute owner.

In the premises, the averments made by Veronica that Susan deserted the deceased's home and thus John Kabute Wambugu should not be given any share of the estate, cannot now be reopened by this court. In the said ruling Veronica has been mentioned as a widow and a beneficiary. It is also to be noted that Veronica is the mother of Samson Mwea Wambugu who filed the original Petition based on a written will giving all the assets of the estate to him and which will have been declared as a nullity.

Lastly, John Kabute Wambugu the 4th objector, filed a replying affidavit sworn on 11th June, 2007 wherein he has named the children of Susan who has been named as a widow of the deceased. Her rights were asserted in the Objection and cross-petition filed on 22nd November, 1992. It was also averred that the issue of rents owed to Samson Mwea Wambugu the son of Veronica has been dealt with in the Ruling of Githinji J. (as earlier mentioned).

After filing of all these applications and affidavits, it was agreed by all counsel, that they do not intend to cross-examine any of the deponents and made their submissions on the pleadings on record.

I shall start by the first cross-petition filed by Lucia Wanjiru Teresio Njoka and Susan Gakui. In their affidavits in support they have mentioned Veronica and Samsan Mwea as the beneficiaries. It has also become evident that Teresio Njoka Wambugu was representing the house of one Muriko Wambugu who had pre-deceased the deceased. In any of the affidavits filed by Veronica, the fact that Teresio Njoka is a son of the deceased has not been denied. As a matter of fact he has always been a co-administrator throughout. There are four Administrators in the present estate after Veronica filed her summons for annulment. This fact itself shows that Teresio was representing his deceased mother. The claim by Veronica as regards Susan having deserted/divorced the deceased has not been proved by the Applicant who asserts the said issue. As a matter of fact, Teresio has been accepted as a beneficiary by all concerned.

In my view the parties are at idem on the assets and beneficiaries of the estate and the only issue for determination is the distribution.

Unfortunately I do not have details of the houses or which house the beneficiaries do belong to. I also do not have details of the daughters who are married or otherwise, not that it should make any difference. But it shall be proper if I the consent of all of the beneficiaries is obtained thereafter. As per the affidavits in protest, the eight beneficiaries who have consented are all from the same house, but without further

details would hesitate to presume so.

I am also mindful of the fact that Veronica is in exclusive possession of one asset of the estate and despite accepting others as beneficiaries, she has refused to give accounts of the estate.

Doing best I could, under the circumstances, I shall direct that the administrators or any of them shall file the details of the beneficiaries as per the houses. I further order Veronica Kanini Wambugu Applicant/co-Administratrix herein to file and serve the accounts of the proceeds from two properties namely Baragui/Kanini/174 and Plot No.26 Kianyaga.

The aforesaid orders are to be complied within 30 days from the date hereof.

Dated and signed at Nairobi this 28th day of January, 2009.

K.H. RAWAL

JUDGE

28.1.09